



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 27 2014

Michael J. Barkley

Manteca, CA 95336

RE: MUR 6595

Dear Mr. Barkley:

The Federal Election Commission reviewed the allegations in your complaint received on June 18, 2012. On May 20, 2014, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion and dismiss the allegation that Denham for Congress and David Bauer in his official capacity as treasurer violated the Federal Election Campaign Act of 1971, as amended, and Commission regulations. Accordingly, the Commission closed its file in this matter on May 20, 2014.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

General Counsel

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Denham for Congress
and David Bauer as treasurer

MUR 6595

I. INTRODUCTION

This matter was generated by a Complaint filed by Michael J. Barkley ("Barkley") alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by Respondents Denham for Congress and David Bauer in his official capacity as treasurer (collectively the "Committee"). After reviewing the record, the Commission dismissed the allegation.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Complainant Michael J. Barkley¹ alleges that the Committee erected campaign signs in numerous "high-traffic" locations throughout California's 10th congressional district, which he contends helped Denham win California's 2012 primary election. Compl. at 1. The signs allegedly were displayed on commercial property, and Barkley contends that the advertising space provided by these commercial property owners gave something of value to the Committee. *Id.* However, Barkley asserts that the Committee did not report any disbursements to the owners of the property where the signs were placed. *Id.* at 1-2. Nor did the Committee disclose the "fair market value" of the advertising space as in-kind contributions from the property owners to the Committee. *Id.* at 1.

¹ Denham for Congress is the principal campaign committee of Congressman Jeff Denham. Barkley was one of Denham's opponents in the June 5, 2012 primary election.

1 Barkley includes by reference 42 pages of photographs of approximately 35 Denham
2 campaign signs, which are posted on his website at <http://www.mjbarkl.com/denham2.htm>.
3 Compl. at 1. The signs include the message "Local Farmer, Jeff Denham, U.S. Representative,"
4 with a disclaimer stating "[p]aid for and authorized by Denham for Congress." *Id.* The signs
5 appear to have been posted in various residential, commercial, and industrial areas. *Id.* at 1-3.
6 According to Barkley, the Denham campaign signs were displayed for four to eight weeks, and
7 might have resulted in as much as \$340,000 in unreported contributions. ² *Id.*

8 The Committee responds that, during the campaign, it routinely provided campaign signs
9 to volunteers upon request. Resp. at 1. However, Committee agents and employees did not
10 direct volunteers to place signs in certain locations, nor did the Committee keep records of where
11 the signs were ultimately placed. *Id.* The Committee argues that, under the Act and
12 Commission regulations, the value of services provided by uncompensated campaign volunteers
13 is not a contribution to the campaign, even when volunteers provide their personal residence for
14 campaign-related activity. *Id.* Therefore, the Committee asserts that no contributions resulted
15 when volunteers posted signs on their personal property, regardless of the alleged value that may
16 be calculated by the number of "people pass[ing] by the location in a given day" and viewing the
17 signs. *Id.*

18 The Committee further denies that it directed volunteers to place signs on corporate
19 property and suggests that, if any signs were placed on corporate property, the volunteers may
20 have acted on their own initiative. Resp. at 2. The Committee also claims that it is unaware of
21 any corporations that agreed to place the Committee's signs on their property, and asserts that
22 Barkley's photographs disclose other candidates' signs posted in the same locations. *Id.* To the

² Barkley estimated the value based on commercial rates for outdoor advertising displays that are calculated according to the display size, type, and number of "eyes" that will see the display. Compl. at 2.

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1 extent that campaign signs were displayed on corporate property, the Committee argues that no
2 contribution resulted because the signs were allegedly placed without its knowledge and without
3 the corporations' consent. *Id.*

4 In sum, the Complaint alleges that the Committee received something of value when its
5 campaign signs were displayed on commercial property without charge. The Committee asserts
6 that no contribution resulted when volunteers posted signs on their own property, and the
7 Committee is unaware of any corporate entities that consented to post campaign signs on their
8 corporate property.

9 **B. Legal Analysis**

10 The Act and Commission regulations define "contribution" as any "gift, subscription,
11 loan . . . or anything of value made by any person for the purpose of influencing any election for
12 Federal office." 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a); *see also* 2 U.S.C. § 441b(b)(2).
13 The Act limits the amount any person may contribute to a candidate with respect to any election
14 for Federal office.³ 2 U.S.C. § 441a(a)(1)(A); *see also* 11 C.F.R. § 110.1(b). It also prohibits
15 corporations from making contributions in connection with federal elections. 2 U.S.C.
16 § 441b(a); *see also* 11 C.F.R. § 114.2(b)(1). "Contribution" does not include "the value of
17 services provided without compensation by any individual who volunteers on behalf of a
18 candidate or political committee." 2 U.S.C. § 431(8)(B)(i); *see also* 11 C.F.R. § 100.74 (the
19 value of services provided by a volunteer is not a contribution).

20 Under the Enforcement Priority System the Commission uses formal scoring criteria as a
21 basis to allocate its resources and decide which matters to pursue. These criteria include without
22 limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking

³ Committee signs may have been placed on commercial property owned by persons other than corporations including, *inter alia*, unincorporated associations, partnerships, and limited liability companies.

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1 into account both the type of activity and the amount in violation; (2) the apparent impact the
2 alleged violation may have had on the electoral process; (3) the complexity of the legal issues
3 raised in the matter; and (4) recent trends in potential violations of the Federal Election
4 Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the
5 Commission's policy that pursuing relatively low-rated matters on the Enforcement docket
6 warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.
7 The Office of General Counsel has scored MUR 6595 as a low-rated matter. In light of the
8 nature of the alleged facts and circumstances, the Commission dismissed this matter.
9 *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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